
A BILL FOR AN ACT

RELATING TO COUNTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

"§46-1.5 General powers and limitation of the counties.

Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

(1) Each county shall have the power to frame and adopt a charter for its own self-government that shall establish the county executive, administrative, and legislative structure and organization, including but not limited to the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;

(2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or



1 proper for the protection and safeguarding of life,
2 health, and property;

3 (3) Each county shall have the power to enforce all claims
4 on behalf of the county and approve all lawful claims
5 against the county, but shall be prohibited from
6 entering into, granting, or making in any manner any
7 contract, authorization, allowance payment, or
8 liability contrary to the provisions of any county
9 charter or general law;

10 (4) Each county shall have the power to make contracts and
11 to do all things necessary and proper to carry into
12 execution all powers vested in the county or any
13 county officer;

14 (5) Each county shall have the power to:

15 (A) Maintain channels, whether natural or artificial,
16 including their exits to the ocean, in suitable
17 condition to carry off storm waters;

18 (B) Remove from the channels, and from the shores and
19 beaches, any debris that is likely to create an
20 unsanitary condition or become a public nuisance;
21 provided that, to the extent any of the foregoing
22 work is a private responsibility, the



responsibility may be enforced by the county in
lieu of the work being done at public expense;

(C) Construct, acquire by gift, purchase, or by the
exercise of eminent domain, reconstruct, improve,
better, extend, and maintain projects or
undertakings for the control of and protection
against floods and flood waters, including the
power to drain and rehabilitate lands already
flooded; and

(D) Enact zoning ordinances providing that lands
deemed subject to seasonable, periodic, or
occasional flooding shall not be used for
residence or other purposes in a manner as to
endanger the health or safety of the occupants
thereof, as required by the Federal Flood
Insurance Act of 1956 (chapter 1025, Public Law
1016);

(6) Each county shall have the power to exercise the power
of condemnation by eminent domain when it is in the
public interest to do so;



- 1 (7) Each county shall have the power to exercise
2 regulatory powers over business activity as are
3 assigned to them by chapter 445 or other general law;
- 4 (8) Each county shall have the power to fix the fees and
5 charges for all official services not otherwise
6 provided for;
- 7 (9) Each county shall have the power to provide by
8 ordinance assessments for the improvement or
9 maintenance of districts within the county;
- 10 (10) Except as otherwise provided, no county shall have the
11 power to give or loan credit to, or in aid of, any
12 person or corporation, directly or indirectly, except
13 for a public purpose;
- 14 (11) Where not within the jurisdiction of the public
15 utilities commission, each county shall have the power
16 to regulate by ordinance the operation of motor
17 vehicle common carriers transporting passengers within
18 the county and adopt and amend rules the county deems
19 necessary for the public convenience and necessity;
- 20 (12) Each county shall have the power to enact and enforce
21 ordinances necessary to prevent or summarily remove
22 public nuisances and to compel the clearing or removal



1 of any public nuisance, refuse, and uncultivated
2 undergrowth from streets, sidewalks, public places,
3 and unoccupied lots. In connection with these powers,
4 each county may impose and enforce liens upon the
5 property for the cost to the county of removing and
6 completing the necessary work where the property
7 owners fail, after reasonable notice, to comply with
8 the ordinances. The authority provided by this
9 paragraph shall not be self-executing, but shall
10 become fully effective within a county only upon the
11 enactment or adoption by the county of appropriate and
12 particular laws, ordinances, or rules defining "public
13 nuisances" with respect to each county's respective
14 circumstances. The counties shall provide the
15 property owner with the opportunity to contest the
16 summary action and to recover the owner's property;

17 (13) Each county shall have the power to enact ordinances
18 deemed necessary to protect health, life, and
19 property, and to preserve the order and security of
20 the county and its inhabitants on any subject or
21 matter not inconsistent with, or tending to defeat,
22 the intent of any state statute where the statute does



1 not disclose an express or implied intent that the
2 statute shall be exclusive or uniform throughout the
3 State;

4 (14) Each county shall have the power to:

5 (A) Make and enforce within the limits of the county
6 all necessary ordinances covering all:

7 (i) Local police matters;

8 (ii) Matters of sanitation;

9 (iii) Matters of inspection of buildings;

10 (iv) Matters of condemnation of unsafe

11 structures, plumbing, sewers, dairies, milk,
12 fish, and morgues; and

13 (v) Matters of the collection and disposition of
14 rubbish and garbage;

15 (B) Provide exemptions for homeless facilities and
16 any other program for the homeless authorized by
17 part XVII of chapter 346, for all matters under
18 this paragraph;

19 (C) Appoint county physicians and sanitary and other
20 inspectors as necessary to carry into effect
21 ordinances made under this paragraph, who shall
22 have the same power as given by law to agents of



1 the department of health, subject only to
2 limitations placed on them by the terms and
3 conditions of their appointments; and

4 (D) Fix a penalty for the violation of any ordinance,
5 which penalty may be a misdemeanor, petty
6 misdemeanor, or violation as defined by general
7 law;

8 (15) Each county shall have the power to provide public
9 pounds; to regulate the impounding of stray animals
10 and fowl, and their disposition; and to provide for
11 the appointment, powers, duties, and fees of animal
12 control officers;

13 (16) Each county shall have the power to purchase and
14 otherwise acquire, lease, and hold real and personal
15 property within the defined boundaries of the county
16 and to dispose of the real and personal property as
17 the interests of the inhabitants of the county may
18 require, except that:

19 (A) Any property held for school purposes may not be
20 disposed of without the consent of the
21 superintendent of education;



1 (B) No property bordering the ocean shall be sold or
2 otherwise disposed of; and

3 (C) All proceeds from the sale of park lands shall be
4 expended only for the acquisition of property for
5 park or recreational purposes;

6 (17) Each county shall have the power to provide by charter
7 for the prosecution of all offenses and to prosecute
8 for offenses against the laws of the State under the
9 authority of the attorney general of the State;

10 (18) Each county shall have the power to make
11 appropriations in amounts deemed appropriate from any
12 moneys in the treasury, for the purpose of:

13 (A) Community promotion and public celebrations;

14 (B) The entertainment of distinguished persons as may
15 from time to time visit the county;

16 (C) The entertainment of other distinguished persons,
17 as well as, public officials when deemed to be in
18 the best interest of the community; and

19 (D) The rendering of civic tribute to individuals
20 who, by virtue of their accomplishments and
21 community service, merit civic commendations,
22 recognition, or remembrance;



1 (19) Each county shall have the power to:

2 (A) Construct, purchase, take on lease, lease,
3 sublease, or in any other manner acquire, manage,
4 maintain, or dispose of buildings for county
5 purposes, sewers, sewer systems, pumping
6 stations, waterworks, including reservoirs,
7 wells, pipelines, and other conduits for
8 distributing water to the public, lighting
9 plants, and apparatus and appliances for lighting
10 streets and public buildings, and manage,
11 regulate, and control the same;

12 (B) Regulate and control the location and quality of
13 all appliances necessary to the furnishing of
14 water, heat, light, power, telephone, and
15 telecommunications service to the county;

16 (C) Acquire, regulate, and control any and all
17 appliances for the sprinkling and cleaning of the
18 streets and the public ways, and for flushing the
19 sewers; and

20 (D) Open, close, construct, or maintain county
21 highways or charge toll on county highways;
22 provided that all revenues received from a toll



1 charge shall be used for the construction or
2 maintenance of county highways;

3 (20) Each county shall have the power to regulate the
4 renting, subletting, and rental conditions of property
5 for places of abode by ordinance;

6 (21) Unless otherwise provided by law, each county shall
7 have the power to establish by ordinance the order of
8 succession of county officials in the event of a
9 military or civil disaster;

10 (22) Each county shall have the power to sue and be sued in
11 its corporate name;

12 (23) Each county shall have the power to establish and
13 maintain waterworks and sewer works; to collect rates
14 for water supplied to consumers and for the use of
15 sewers; and to install water meters whenever deemed
16 expedient; provided that [~~owners~~]:

17 (A) Owners of premises having vested water rights
18 under existing laws appurtenant to the premises
19 shall not be charged for the installation or use
20 of the water meters on the premises; [~~to take~~
21 ~~over from the State existing waterworks systems,~~
22 ~~including water rights, pipelines, and other~~



1 ~~appurtenances belonging thereto, and sewer~~
2 ~~systems, and to enlarge, develop, and improve the~~
3 ~~same;]~~

4 (B) Each county may impose and enforce liens upon the
5 premises served for any unpaid water or sewer
6 charges where the owner of the premises fails to
7 make payment, after reasonable notice to the
8 owner or agent, which includes access to account
9 information for the delinquent account to the
10 extent permitted by law, and after being given an
11 opportunity for a hearing pursuant to chapter 91;
12 provided that the lien may be enforced against
13 the entire unpaid amount; and

14 (C) The authority provided by subparagraph (B) shall
15 take effect in a county only upon the adoption of
16 ordinances or rules by the county to impose and
17 enforce liens in accordance with subparagraph
18 (B);

19 (24) (A) Each county may impose civil fines, in addition
20 to criminal penalties, for any violation of
21 county ordinances or rules after reasonable
22 notice and requests to correct or cease the



1 violation have been made upon the violator. Any
2 administratively imposed civil fine shall not be
3 collected until after an opportunity for a
4 hearing under chapter 91. Any appeal shall be
5 filed within thirty days from the date of the
6 final written decision. These proceedings shall
7 not be a prerequisite for any civil fine or
8 injunctive relief ordered by the circuit court;

9 (B) Each county by ordinance may provide for the
10 addition of any unpaid civil fines, ordered by
11 any court of competent jurisdiction, to any
12 taxes, fees, or charges, with the exception of
13 fees or charges for water for residential use and
14 sewer charges, collected by the county. Each
15 county by ordinance may also provide for the
16 addition of any unpaid administratively imposed
17 civil fines, which remain due after all judicial
18 review rights under section 91-14 are exhausted,
19 to any taxes, fees, or charges, with the
20 exception of water for residential use and sewer
21 charges, collected by the county. The ordinance
22 shall specify the administrative procedures for



1 the addition of the unpaid civil fines to the
2 eligible taxes, fees, or charges and may require
3 hearings or other proceedings. After addition of
4 the unpaid civil fines to the taxes, fees, or
5 charges, the unpaid civil fines shall not become
6 a part of any taxes, fees, or charges. The
7 county by ordinance may condition the issuance or
8 renewal of a license, approval, or permit for
9 which a fee or charge is assessed, except for
10 water for residential use and sewer charges, on
11 payment of the unpaid civil fines. Upon
12 recordation of a notice of unpaid civil fines in
13 the bureau of conveyances, the amount of the
14 civil fines, including any increase in the amount
15 of the fine which the county may assess, shall
16 constitute a lien upon all real property or
17 rights to real property belonging to any person
18 liable for the unpaid civil fines. The lien in
19 favor of the county shall be subordinate to any
20 lien in favor of any person recorded or
21 registered prior to the recordation of the notice
22 of unpaid civil fines and senior to any lien



1 recorded or registered after the recordation of
2 the notice. The lien shall continue until the
3 unpaid civil fines are paid in full or until a
4 certificate of release or partial release of the
5 lien, prepared by the county at the owner's
6 expense, is recorded. The notice of unpaid civil
7 fines shall state the amount of the fine as of
8 the date of the notice and maximum permissible
9 daily increase of the fine. The county shall not
10 be required to include a social security number,
11 state general excise taxpayer identification
12 number, or federal employer identification number
13 on the notice. Recordation of the notice in the
14 bureau of conveyances shall be deemed, at such
15 time, for all purposes and without any further
16 action, to procure a lien on land registered in
17 land court under chapter 501. After the unpaid
18 civil fines are added to the taxes, fees, or
19 charges as specified by county ordinance, the
20 unpaid civil fines shall be deemed immediately
21 due, owing, and delinquent and may be collected
22 in any lawful manner. The procedure for



1 collection of unpaid civil fines authorized in
2 this paragraph shall be in addition to any other
3 procedures for collection available to the State
4 and county by law or rules of the courts;

5 (C) Each county may impose civil fines upon any
6 person who places graffiti on any real or
7 personal property owned, managed, or maintained
8 by the county. The fine may be up to \$1,000 or
9 may be equal to the actual cost of having the
10 damaged property repaired or replaced. The
11 parent or guardian having custody of a minor who
12 places graffiti on any real or personal property
13 owned, managed, or maintained by the county shall
14 be jointly and severally liable with the minor
15 for any civil fines imposed hereunder. Any such
16 fine may be administratively imposed after an
17 opportunity for a hearing under chapter 91, but
18 such a proceeding shall not be a prerequisite for
19 any civil fine ordered by any court. As used in
20 this subparagraph, "graffiti" means any
21 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,
2 ink, chalk, dye, or similar substances;

3 (D) At the completion of an appeal in which the
4 county's enforcement action is affirmed and upon
5 correction of the violation if requested by the
6 violator, the case shall be reviewed by the
7 county agency that imposed the civil fines to
8 determine the appropriateness of the amount of
9 the civil fines that accrued while the appeal
10 proceedings were pending. In its review of the
11 amount of the accrued fines, the county agency
12 may consider:

13 (i) The nature and egregiousness of the
14 violation;

15 (ii) The duration of the violation;

16 (iii) The number of recurring and other similar
17 violations;

18 (iv) Any effort taken by the violator to correct
19 the violation;

20 (v) The degree of involvement in causing or
21 continuing the violation;



1 (vi) Reasons for any delay in the completion of
2 the appeal; and

3 (vii) Other extenuating circumstances.

4 The civil fine that is imposed by administrative
5 order after this review is completed and the
6 violation is corrected shall be subject to
7 judicial review, notwithstanding any provisions
8 for administrative review in county charters;

9 (E) After completion of a review of the amount of
10 accrued civil fine by the county agency that
11 imposed the fine, the amount of the civil fine
12 determined appropriate, including both the
13 initial civil fine and any accrued daily civil
14 fine, shall immediately become due and
15 collectible following reasonable notice to the
16 violator. If no review of the accrued civil fine
17 is requested, the amount of the civil fine, not
18 to exceed the total accrual of civil fine prior
19 to correcting the violation, shall immediately
20 become due and collectible following reasonable
21 notice to the violator, at the completion of all
22 appeal proceedings;



(F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose the civil fine;

(25) Any law to the contrary notwithstanding, any county mayor, by executive order, may exempt donors, provider agencies, homeless facilities, and any other program for the homeless under part XVII of chapter 346 from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph;

(26) Any county may establish a captive insurance company pursuant to article 19, chapter 431; and

(27) Each county shall have the power to enact and enforce ordinances regulating towing operations."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



1 SECTION 3. This Act shall take effect on December 21,
2 2112.



Report Title:

Counties; Liens; Water and Sewer Charges; Waterworks Systems;
Sewer Systems

Description:

Authorizes counties to impose and enforce liens upon premises served for unpaid water or sewer charges after notice to the owner or agent, which includes access to account information to the extent permitted by law, and an opportunity for a hearing. Repeals county authority to take over existing state waterworks and sewer systems. (SB3094 HD2)

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